

19-1540-cv

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

DONALD J. TRUMP, DONALD J. TRUMP JR., ERIC TRUMP, IVANKA TRUMP, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER LLC, TRUMP ACQUISITION LLC, and TRUMP ACQUISITION, CORP.,

Plaintiffs-Appellants,

v.

DEUTSCHE BANK AG, CAPITAL ONE FINANCIAL CORP.,

Defendants-Appellees,

COMMITTEE ON FINANCIAL SERVICES OF THE UNITED STATES HOUSE OF REPRESENTATIVES, PERMANENT SELECT COMMITTEE ON INTELLIGENCE OF THE UNITED STATES HOUSE OF REPRESENTATIVES,

Intervenor Defendants-Appellees.

On Appeal from the United States District Court
for the Southern District of New York

RESPONSE OF DEUTSCHE BANK AG TO MEDIA COALITION'S, DOW JONES', AND REUTERS' MOTIONS TO INTERVENE AND UNSEAL JUDICIAL RECORDS

RAPHAEL A. PROBER
STEVEN R. ROSS
AKIN GUMP STRAUSS HAUER & FELD LLP
2001 K Street N.W.
Washington, D.C. 20006
(202) 887-4319
Additional counsel listed in signature block

September 27, 2019

Per the Court’s order, ECF No. 180 (Sept. 18, 2019), Defendant-Appellee Deutsche Bank AG (“Deutsche Bank” or the “Bank”) files this response to Media Coalition’s, Dow Jones & Company, Inc.’s (“Dow Jones”), and Reuters News & Media Inc.’s (“Reuters”) motions to Intervene and Unseal Judicial Records. ECF No. 172 (Sept. 11, 2019) & No. 176 (Sept. 17, 2019). The Media Coalition’s motion concerns the letter filed by Deutsche Bank, ECF No. 161 (Aug. 27, 2019) (the “August 27 Letter”), in response to the Court’s order directing the Bank to inform the Court “whether it has in its possession any tax returns of any of the individuals or entities named or referred to (directly or indirectly) in paragraph 1 of the subpoenas” served on the Bank on April 15, 2019 by the House Committee on Financial Services and Permanent Select Committee on Intelligence (the “Subpoenas”). ECF No. 156 (Aug. 26, 2019).

The Media Coalition raises the question of whether the tax returns referenced in the August 27 Letter relate to individuals (which are protected under the Gramm-Leach-Bliley Act) or entities (which the Media Coalition argues are not covered). ECF No. 172, at 13-14. Based on Deutsche Bank’s current knowledge and the results of the extensive searches that have already been conducted, the Bank has in its possession tax returns (in either draft or as-filed form) responsive to the Subpoenas for two individuals, not entities, named in the Subpoenas.

The Media Coalition also questions the content of the contractual provisions referenced in the August 27 Letter concerning customer privacy. ECF No. 172, at 15. With respect to the first individual, there are a number of relevant contractual obligations related to confidentiality. While not all relevant contractual obligations contain identical language, a representative example of one such contractual obligation includes the following provisions:

- “Lender agrees to maintain the confidentiality of the Information,” other than in certain enumerated circumstances (see third bullet).
- “Information” is defined as “all information received from any Obligor relating to any Obligor or any of its Affiliates or businesses, other than any such information that is available to Lender on a nonconfidential basis prior to disclosure by such Person.”
- The enumerated circumstances in which limited disclosure may be permissible include, for example, “to the extent requested by any regulatory authority purporting to have jurisdiction over it;” or “to the extent required by applicable laws or regulations or by any subpoena or similar legal process.”

With respect to the second individual, and based on diligent searches the Bank has undertaken to date, the Bank has identified contracts related to that individual; however, none of those contracts contain a similar confidentiality

provision nor has the Bank been able to locate a separate confidentiality contract pertaining to this second individual.

Deutsche Bank continues to oppose Media Coalition's, Dow Jones', and Reuter's motions to unseal based on the concerns raised in the August 27 Letter.¹ Consistent with the process outlined in this Court's order, ECF No. 157 (Aug. 27, 2019), Deutsche Bank has not provided notice to the two individuals that they are named in the unredacted version of the August 27 Letter that was filed under seal.² Accordingly, should this Court decide to unseal the identity of either individual named in the August 27 Letter, the Bank would respectfully ask that the Court set a date certain on which this information will be unsealed and allow that the Bank may advise any impacted customers of the Court's decision prior to the public disclosure.

¹ Deutsche Bank does not oppose the motions to intervene.

² With respect to the provision of notice, the contractual provision pertaining to the first individual, described *supra*, also provides that "Lender shall use its reasonable efforts to so notify Borrower of its receipt of a subpoena or other similar legal notice within ten (10) days of such receipt by Lender, it being understood and agreed that the failure of Lender to so notify Borrower shall not constitute a breach hereunder..." While the Bank previously provided notice to each of the two individuals upon receipt of the Subpoenas at issue, it has interpreted the Court's August 27 order as precluding notice to those same individuals that they are identified in the August 27 Letter.

Dated: September 27, 2019

AKIN GUMP STRAUSS HAUER & FELD LLP

/s/ Raphael A. Prober

Raphael A. Prober

Steven R. Ross

Parvin D. Moyne

Thomas C. Moyer

2001 K Street N.W.

Washington, D.C. 20006

Telephone: (202) 887-4319

Facsimile: (202) 887-4288

Attorneys for Deutsche Bank AG

CERTIFICATE OF SERVICE

I certify that on September 27, 2019, I filed a copy of the foregoing document via the CM/ECF system of the United State Court of Appeals for the Second Circuit, which I understand caused service on all registered parties.

/s/ Raphael A. Prober
Raphael A. Prober